



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1414 OF 2024

Tara Chand Infralogistic Solutions Limited,
Reg. Office at 342, Industrial Area,
Phase – 1, Chandigarh – 160002, through
Authorised Representative - Ashokkumar
Rathaur.

.... **PETITIONER**

VERSUS

- 1) Union of India,
Ministry of Steel, through its secretary,
Udyog Bhavan, New Delhi,
email : sail.ip.secretariat@gmail.com
- 2) Steel Authority of India Limited,
(A Government of India Enterprise)
Central Marketing Organization,
Branch Sales Office at Nagpur,
4th Floor, Shri Mohini Complex 345,
S.V. Patel Road, Kingsway, Nagpur,
Maharashtra - 440001.
- 3) The Chairman,
Steel Authority of India Limited,
Ispat Bhavan, Lodhi Road,
New Delhi.
- 4) General Manager,
(MS-CC) SAIL-CMO, Ispat Bhawan,
Kolkata – 700 071.
- 5) Srivenkataraman Engineering,
a Partnership Firm, duly registered under
Indian Partnership Act, through its partner
Mr. A. Satyanarayana Murthy, having its
Office at 50-48-20, P & T Colony, Seetha
Magdhar, Vishakhapatnam-530013.

.... **RESPONDENTS**

Ms. Yashodhan Thakur, Counsel for the petitioner,
Mr. S.A. Chaudhari, Counsel for respondent No.1,
Mr. S.N. Kumar, Counsel for respondent Nos.2 to 4.
Mr. M.G. Bhangde, Senior Counsel assisted by Mr. R.M. Bhangde,
Counsel for respondent No.5.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**
DATED : 18th MARCH, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Rule. Rule is made returnable forthwith and heard finally with the consent of the counsel for the respective parties.

2. The petitioner has approached this Court seeking a writ, order, or direction in the nature of certiorari for quashing the order issued by respondent No.4 vide email dated 15-02-2024 about the rejection of the techno commercial bid submitted by the petitioner company on 04-01-2024 in response to the Notice Inviting Tender dated 16/12/2023.

3. **FACTUAL MATRIX :**

(a) Respondent Nos.2 to 4 issued a tender under the designation Notice Inviting Tenders (hereinafter referred to as “*NIT*”) No. SAIL/CMO/NAGPUR/CA/2023/01 dated 16-12-2023. Under the document, the tenderer was required to meet various criteria namely financial standing, performance record, infrastructure, and minimum equipment requirement. In the criteria of infrastructure, the tenderer was required to possess land measuring 12.5 acres, complete with the specified infrastructure facilities outlined in the tender document.

(b) The petitioner acquired land measuring 12.5 acres located in Mouza-Khairi on a lease basis vide registered lease deed dated 03-01-2024. The land owner of the said land had availed the crop loan of Rs.1.6 Lakhs from the Bank of India through the Kisan Cash Credit (KCC)Scheme.

(c) On 04-01-2024 the petitioner submitted its bid in the prescribed time along with the requisite documents. Pursuant to the same, the respondents through email on 01-02-2024 requested the petitioner to furnish certain deficient documents. Thereafter again on 05-2-2024, the respondents issued another email seeking additional documents coupled with a new affidavit affirming that there is no encumbrance and the property is free from mortgage, charge, or lien. Accordingly, the petitioner supplied the information on 07-02-2024 contending that inadvertently indicating encumbrance over the property and pledging to settle the outstanding dues or loans associated with the said property in the event of being awarded L1.

(d) On 12-02-2024 physical inspection was conducted and all original documents of the plots were scrutinized. During scrutiny, the committee found that there was encumbrance on the offered plot rendering it ineligible as per the specified criteria. Accordingly, they informed the petitioner vide email dated 14-02-2024 that the plot of

land offered by the petitioner was not found suitable and ineligible with the tender terms.

4. **SUBMISSION ON BEHALF OF THE PETITIONER-**

(a) Ms. Yashodhan Thakur, learned Counsel for the petitioner vociferously submitted that passing of the order by respondent Nos.2 to 4 is illegal and contrary to the facts on record. She has submitted that in 7/12 extract crop loan is shown. She further harped that an agricultural loan of Rs.1.6 Lakhs obtained under the 'KCC' Scheme cannot reasonably be deemed as an encumbrance, but it is secured by hypothecation of standing crops and not a mortgaged of land. In support of her submission, she has relied on the 7/12 extract, letter, and no-dues certificate issued by the bank. She further argued that the respondents have not produced the search report before the Court to show that land is mortgaged with the bank. She has drawn our attention to sub-clause (e) of Clause 2.3.2 of the Tender Notice and submitted that the petitioner has possessed 12.5 acres of land as per the said requirement without having any encumbrance. She further pointed out that loans for the years 2002, 2013, and 2019 had been cleared by the owner of the land. No due certificate was issued by the bank showing that the land owner has cleared the loan for the years 2002, 2013, and 2019, however, neither the entry in that regard was

taken nor cancelled in the 7/12 extract. That does not mean that there is any encumbrance over the land.

(b) The learned Counsel for the petitioner has drawn our attention to the provisions of Sections 108, 148-C, and 157 of the Maharashtra Land Revenue Code and tried to emphasize that the said entry would not take away any right of the lessee to transfer the property. The entry about the crop loan is against the personal guarantee and not the mortgage against the land. Lastly, she has submitted that no opportunity was given to the petitioner to explain the encumbrance. Hence, she urged that the rejection of the tender bid of the petitioner by the respondents be declared illegal and contrary to the provisions of law and prayed for allowing the petition.

5. **SUBMISSION ON BEHALF OF RESPONDENT NO.5-**

(a) *Per contra*, Mr. M.G. Bhangde, learned Senior Counsel for respondent No.5 vehemently submitted that despite giving an opportunity to the petitioner by email dated 01-02-2024, the petitioner failed to comply the same in time i.e. till 11-02-2024 and, therefore, it cannot be said that it has adhered to the terms and conditions of the tender notice. He has pointed out the 7/12 extract and entries in it and submitted that in the said 7/12 extract, it is mentioned that the

property is mortgaged as well as encumbrance is there and the charge was never cancelled. No reason has been assigned for non-cancellation of the same. The entries in the 7/12 extract have presumptive value till it is set aside, therefore, it cannot be said that there was no encumbrance. He has invited our attention to the affidavit submitted by the petitioner on 07-02-2024 with the authority wherein the petitioner has categorically affirmed that the property in question is under encumbrance. The said fact itself shows that there was encumbrance over the land in question.

(b) He has further drawn our attention to sub-clause (e) of Clause 2.3.1(A)1 of the Tender Notice and submitted that as per the said condition, the land offered is not suitable for this contract as an overhead transmission line laid across the plot/land contrary to said condition. Also on inspection of the land in question, it is found that there was a high tension line passing within the premises which is contrary to the condition laid down in the tender notice and, therefore, the land in question is not suitable. He submitted that though the petitioner tried to point out that he has obtained no due certificate that the property had never been mortgaged and other letters produced before the Court, however, all those documents were produced after the cut-off date i.e. 11-02-2024 and, therefore, those documents were

not available before the Committee at the time of scrutiny of the documents. Hence, those documents are not helpful for the petitioner in support of its case.

(c) Lastly, the learned Senior Counsel has submitted that there is no pleading that overwhelming public interest requires interference, so the question of interference in the order passed by the respondent authority does not arise at all. To buttress his submission, he has relied upon the judgment of the Hon'ble Apex Court in *Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others*, **2023 SCC OnLine SC 671**. Thus, he urged that there is no merit in the petition and prayed for the dismissal of the petition.

6. **ANALYSIS** -

(a) Having heard the learned Counsel Ms. Yashodhan Thakur for the petitioner, learned Counsel Mr. S.A. Chaudhari for respondent No.1, learned Counsel Mr. S.N. Kumar for respondent Nos.2 to 4 as well as learned Senior Counsel Mr. M.G. Bhangde for respondent No.5 and gone through the materials on record, the only crucial question that falls for our consideration is, “*whether the rejection of the techno-commercial bid submitted by the petitioner company in response to the tender notice is illegal?*”

(b) Having considered the rival submissions of the parties, we would like to refer to the case *Tata Cellular V/s Union of India reported at (1994) 6 SCC 651*, wherein the Apex Court has very well crystallized the scope of judicial review in the matters of allotment of tenders and laid down the principles in paragraph 77 of the judgment, which has been referred by this Court in *Writ Petition No. 2084/2014 (M/s. Tarachand Logistics Solutions Ltd. Navi Mumbai V/s Steel Authority of India Limited, Nagpur and others)* delivered on 17-6-2014, which reads thus :

“The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

- (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*

(iii) *Procedural impropriety.*

The above are only the broad grounds but it does not rule out the addition of further grounds in the course of times. As a matter of fact, in R. vs. Secretary of State for the Home Department, ex Brind – (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

9. *It can thus be seen that while exercising the power of judicial review in such matters, what is expected of a court is to examine as to whether the decision-making process has been vitiated on account of irrationality, unreasonableness, unfairness, or unjustness. The court is not concerned with the ultimate decision taken by the Authority but with the decision-making process that has undergone while taking the ultimate decision.”*

7. Also, we would like to reproduce paragraph Nos. 52, 53 and 54 of the judgment of the Hon’ble Apex Court in *Tata Motors Limited* (*supra*) as under :

“52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume a lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/ implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-judge Bench decision of this Court in Association of Registration Plates v. Union of India and Others, reported in (2005) 1 SCC 679.

53. The law relating to the award of contracts by the State and public sector corporations was reviewed in [Air India Ltd. v. Cochin International Airport Ltd.](#), reported in (2000) 2 SCC 617. It was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities, and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in [Jagdish Mandal v. State of Orissa and Others](#), reported in (2007) 14 SCC 517, while invoking the power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to the award of the contract is bona fide and is in the public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

8. It is also pertinent to note that the Court being the Constitutional functionary is duty-bound to guard the rights of the parties to interfere when there is arbitrariness, irrationality, *mala fides*, and bias. Likewise, the Hon’ble Apex Court has cautioned time and

again that the Court should exercise a law of restraint while exercising its power in judicial review in contractual and commercial matters. Similarly, the Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness, *mala fides*, bias, or irrationality is made out.

In this background, we will have to examine the contentions in the present petition.

9. Perused the impugned order dated 15-02-2024 rejecting the tender notice. It seems that the tender notice was rejected mainly on the ground that the petitioner failed to show that he is eligible under **Clause No. 2.3.2 (e)** of the Tender Notice i.e. “*Eligibility of Bidders*” of “*Invitation to Tender*”.

The *second point* of the rejection is that “*encumbrance found over the plot of land contrary to **Clause No. 2.3.3(d)(ii)** of the Tender Notice.*” *Thirdly*, during the argument, the learned Senior Counsel for respondent No.5 harped upon the point that the overhead high-tension line was passing through the plot of land, which is contradictory to **Clause No.2.3.1(A)(1)(e)** of the Tender Notice. The learned Senior Counsel further argued that the petitioner failed to deposit the earnest money of Rs.35 Lakhs in pursuance of the tender notice and the petitioner has furnished a false declaration.

10. That being so, we would like to discuss the points one by one.

(A) The first point is the “**Eligibility of Bidders**” of “**Invitation to Tender**”. While considering the aforesaid fact, it would be appropriate to reproduce **Clause No.2.3.2(e)** as under :

(i) **Clause No.2.3.2(e)**

*“The Tenderer shall offer a piece of land measuring an area of minimum 10 acres which he must hold and possess either on ownership basis or under registered lease deed for a period of at least 8 years from the date of submission of his tender, or for a period of less than 8 years from the date of submission of the tender but within the condition therein that in case his tender is accepted, the owner/lesser of the land shall demise the land to the tenderer under registered lease/sub-lease deed for a tenure covering the entire period of the contract plus 6 months, as per format enclosed at Annexure-12. **Such land should be free from all encumbrances.** Besides, the tenderer has to submit an undertaking that the validity of the lease/sub-lease of land will be extended covering the extension period of the contract in case the tenure of the contract is extended. (Details of Land ANNEXURE-13)”*

(ii) **Clause No.2.3.3(d)(ii)** as under :

*“**All such land should be free from all encumbrances.** Non-encumbrance certificate in respect of the said land offered by the Bidder, to be obtained preferably from a local Government Pleader and is to be submitted along with the Tender after searching / inspection of the records of the local offices of the concerned Registrar and any other concerned Authority / Authorities for a period not less than 12 years preceding the date of submission of Tender to ascertain the valid title of the land free from all encumbrances.”*

The aforesaid clauses clearly depict that the tenders should have a clear title and the land shall be **free from all encumbrance**, mortgage, etc. on the date on which the bid is submitted, and suitable for the purpose of the project.

(iii) *Furthermore, as per **Clause No.10(iii)** of the Tender Notice, “The tender contains inadmissible reservations or restrictions or alterations or conditions/deviations, in such case tenders may generally be rejected.”*

(iv) In paragraph No.9 of the petition, it is categorically stated that *“In compliance, the petitioner, through an email dated 07-02-2024 supplied requested documents along with an affidavit inadvertently **indicating encumbrance** of the property and pledging to settle any outstanding dues or loans associated with the said property in the event of being awarded L1.”* Respondent Nos.2 to 4 along with the reply have produced the affidavit filed by the petitioner with them on 07-02-2024. It would be proper to reproduce paragraph No.2 of the said affidavit, which reads thus :

*“2. That **the property in question is under encumbrance and** we hereby undertake that we will clear all dues/loan pertaining to the said property if we are awarded L1”.*

(v) The said fact is not disputed by the petitioner. *Moreover*, the respondents have produced copies of 7/12 extracts of City Survey Nos.1/1, 1/2, and 1/3 filed by the petitioner along with the Tender Form.

A perusal of the copy of the 7/12 extract of City Survey No.1/1 reveals that in the column of 'other rights', it is mentioned that in the year 2002 the property is mortgaged against the loan Rs.20,000/-, and in the 7/12 extract of City Survey No.1/3, it is mentioned that there is a charge of Bank of India, Branch Butibori against the loan of Rs.1,00,000/- and Rs.1,60,000/-. The said fact itself shows that at the time of submission of the Tender Form, the documents on record indicate that there was an encumbrance on the land in question, and said fact is not disputed by the petitioner.

(vi) The only contention of the learned Counsel for the petitioner is that on 16-02-2024 the loan amount of Rs.1,60,000/- was cleared and no-due certificate was obtained from the bank and produced the same before the respondent authority. So also, the loan of Rs.1,00,000/- was taken on 09-07-2020 against the hypothecation of crops. Therefore, it cannot be said that the land was mortgaged. The loan of Rs.20,000/- was taken as a term loan (crop loan) on 27-06-2002, which was repaid, and the no-due certificate was obtained

on 12-2-2024 in that regard. However, inadvertently the entries in the 7/12 extracts remained to be cancelled. Therefore, it is submitted that it cannot be said that there is encumbrance over the agricultural land. However, the respondent authorities have not considered the said fact.

(vii) Lastly, the learned Counsel for the petitioner to buttress her contention has tried to rely upon the order passed by this court at the Principal Seat, Bombay in Writ Petition No. 2640/2010 (*Ibrahimsahib Burhansaheb Kokni V/s The State of Maharashtra and Another*). Based on the above, it is submitted that as per the observations in the said judgment, the circular does not put any restriction on the transfer of property or for creating any third-party interest and it is intended only to alert the revenue officers and particularly those who are responsible for revenue entries regarding the rights of the parties. Therefore, she would urge that the said entries do not cause any prejudice to the rights of the petitioner. As observed above, the petitioner is not disputing the existence of the entries till 16-02-2024. The only contention of the petitioner was that the said encumbrance is not on the land but the same was against the hypothecation of the crops. She has also pointed out provisions of Sections 148-C and 108 of the Maharashtra Land Revenue Code.

Having considered the facts, we do not find substance in the contention of the learned Counsel for the petitioner that said entries do not cause any prejudice to the rights of the petitioner. Therefore, the observations made in the order passed in the W.P. 2640/2010 are not helpful for the petitioner in support of its submissions.

(viii) It is pertinent to note that till the cut-off date i.e. 11-02-2024 the petitioner failed to submit those documents before the Committee. As per the tender notice, at the time of scrutiny on 12-02-2024 the said documents were not available before the Committee, but the documents i.e. 7/12 extracts and affidavit were available with it, which clearly depict the entries of encumbrance/charge over the land in question as per the Government record. Therefore, it cannot be said that the rejection of the tender by the Committee is illegal or contrary to the record. The rejection of the bid is consonant with **Clause Nos. 2.3.2 and 2.3.3(d)(ii)**, and as per **Clause No.2.3.4 of the Tender Notice**, the decision of the company regarding the suitability of the land shall be final and binding upon the tenderer. Therefore, we do not find any fault in the impugned order rejecting the tender of the petitioner nor find substance in the argument made by the learned Counsel for the petitioner in that regard.

(B) The **second point** was that as per **Clause No.2.3.1(A)(e)** of the Tender Notice, there shall not be any overhead transmission line laid across the plot. However, respondent Nos.2 to 4 in their reply have categorically stated that during the inspection, **they found a High-Tension line passing through the side within the premises.** To counter the same, the petitioner by filing a rejoinder tried to clarify that no high-tension lines passed through the premises but there was a residential electricity line serving the entire village. The said fact also denotes that the electricity line is passing through the said land and therefore, respondents Nos.2 to 4 do not find the said land suitable for the project and as per Clause 2.3.2, they have every right to judge the suitability of land and take the decision about same.

(C) The **third ground** was that respondent No.5 in their reply categorically averred that the petitioner had deliberately made a false statement on oath in the ground (c) of the petition that he has furnished an Earnest Money Deposit of Rs.35,00,000/-. In fact, the petitioner has not deposited any earnest money deposit but made an incorrect statement. In rejoinder, the petitioner vaguely averred that the contents of paragraph Nos. 36 and 37 are disputed and denied, but they have not stated specifically that they have deposited the earnest money deposit along with the tender form, so also, they have not

furnished the details about the same in support of their contentions, which leads to draw an adverse inference against the petitioner.

11. *Besides*, the learned Senior Counsel during the argument emphasized that there is no pleading in the petition that “*overwhelming public interest requires interference, the Court should interfere*”. Therefore, he submitted that in the absence of the same, the petitioner is not entitled to claim the relief as prayed. It is pertinent to note that the Hon’ble Apex Court in various judgments has held that the award of contract, whether by a private party or a State, is essentially a commercial transaction. Its own method to arrive at a decision and it is free to grant any relaxation for *bona fide* reasons if the tender conditions permit such relaxation. It is further held that the State, even when some defect is found in the decision-making process, the Court must exercise its discretionary powers under Article 226 of the Constitution of India with great caution and should exercise only in furtherance of public interest and not merely on the making out a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Having considered the settled position of law, we find substance in the argument of the learned Senior Counsel Mr. M.G. Bhangde in that regard.

12. CONCLUSION -

(a) Thus, from a perusal of the record it reveals that during scrutiny, it was found to the Committee that the land offered by the petitioner was not suitable as per Clause 2.3.4 of the Tender Notice. *Moreover*, the material on record shows that there was encumbrance over the land in question, so also the electricity line is passing from the land in question. The entries in the revenue record have presumptive value unless the said has been set aside. *Consequently*, it is evident that the decision taken by the respondent authority is based on the relevant material and the tender document. It is not as if the respondent authorities have acted on irrelevant material while concluding that the petitioner does not conform to the technical bid. Therefore, the observations made in paragraphs 52, 53, and 54 of the judgment in *Tata Motors* (supra) are squarely applicable to the case at hand. *As a result*, we do not find that the decision-making process as adopted by respondent Nos.2 to 4 authorities is vitiated on the grounds of arbitrariness, irrationality, *mala fides*, and bias. Hence, we do not find any merit in the petition to interfere in it.

13. For the reasons above, the petition is dismissed. No Cost.
14. Rule stands discharged.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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